

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TREMAIN CARTER, et al.,

Plaintiffs,

-against-

DSW SHOE WAREHOUSE, INC.,

Defendant.

**ORDER**

23-CV-04761 (PMH)

PHILIP M. HALPERN, United States District Judge:

Counsel for all parties appeared today by telephone for a pre-motion conference. As discussed on the record, the Court heard argument on Defendant's contemplated motion to dismiss Plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6) as well as to strike certain class allegations.

The Court construed Defendant's pre-motion letter (Doc. 5) as its motion to dismiss and Plaintiff's response letter (Doc. 6) as its opposition, and having considered the parties' written submissions as well as hearing argument on the record, the motion is DENIED for the reasons stated. *See In re Best Payphones, Inc.*, 450 F. App'x 8, 15 (2d Cir. 2011); *see also Brown v. New York*, 2022 WL 221343, at \*2 (2d Cir. Jan. 26, 2022). Specifically, the Court cited the myriad district court decisions in the Second Circuit rejecting Defendant's arguments related to standing and private right of action. The Court further found that the Attorney General Report of 1894 is not binding nor is it new evidence or legislative history that would undercut the cases that have considered the issues raised. This Court therefore rules in accordance with the other cases in this Circuit that have thoroughly considered such issues. *See, e.g., Macchiavello v. ABB/CON-CISE Optical Grp. LLC*, 2023 WL 4625009 (S.D.N.Y. July 19, 2023); *Rankine v. Levi Strauss & Co.*, 2023 WL 3582323 (S.D.N.Y. May 22, 2023); *Harris v. Old Navy, LLC.*, 2023 WL 2139688

(S.D.N.Y. Feb. 20, 2023). Accordingly, Defendant's motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6) is DENIED.

The Court denied Defendant's request to strike certain class allegations as premature and more properly considered following discovery at the class certification stage.

Defendant is directed to file its Answer by September 20, 2023.

See Transcript.

**SO ORDERED:**

Dated: White Plains, New York  
September 6, 2023

  
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PHILIP M. HALPERN  
United States District Judge